

# New York City Community Reinvestment Task Force

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December 16, 1997

Cynthia L. Johnson  
Director  
Cash Management Policy and Planning Division  
Financial Management Service  
U.S. Department of the Treasury  
Room 420  
401 14th Street S.W.  
Washington, D.C. 20227

RE: Proposed 31 CFR Part 208

Dear Ms. Johnson:

Thank you for the opportunity to comment on the Department of the Treasury's proposed regulations implementing provisions of Section 31001(x) of the Debt Collection Improvement Act of 1996 (the "Act") that require delivery of federal payments by electronic funds transfer (EFT). The New York City Community Reinvestment Task Force is a network of community organizations and advocates working for community reinvestment in affordable housing, microenterprise, small business, and community development financial institutions in low income neighborhoods in New York City. The Task Force joins with the undersigned groups and public officials to express our concerns about the impact of EFT, as set forth in the proposed regulations, on low income recipients of federal benefits. This letter should be received by Treasury as the equivalent of 29 separate letters from 29 concerned commenters.

We agree with Treasury that EFT has potential to improve delivery of federal benefits to low income people and neighborhoods, but we are concerned that the proposed regulations, as drafted, will not achieve that potential. Below we have focused on critical provisions in the regulations *that must be amended if EFT is truly to serve low income recipients and bring recipients without bank accounts into the financial services mainstream.*

EFT  
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## 1. Hardship waivers

***Recommendation:*** *The final regulations should include waivers for recipients who certify that EFT would cause hardship based on mental disability, lack of literacy, or inability to speak or read English. All waiver provisions should apply to all recipients with bank accounts. The final regulations should ensure that the definition of physical disability will never be less expansive than that set forth in the Americans with Disabilities Act, and that recipients whose situations change will be able to obtain waivers from EFT.*

We support the proposed regulations' inclusion of self-certifying waivers for recipients of federal funds who state that EFT would present a financial hardship, or hardship based on physical disability or geographic barriers. We think that the final regulations should provide explicitly that the definition of physical disability for purposes of an EFT waiver will always be at least as broad as the definition provided in the Americans with Disabilities Act. The final regulations should clarify also that self-certifying waivers will be available to recipients whose situations change such that EFT would cause hardship.

We feel strongly that the final regulations must include additional EFT waivers for recipients who certify that EFT would cause hardship based on mental disability (including developmental and learning disabilities), lack of literacy, or inability to speak or read English. As mentioned in Treasury's preamble to the proposed regulations, the legislative history to the Act specifically mentions mental, educational, and language barriers as presenting potential hardships to recipients required to receive federal benefits by EFT. Treasury's explanations for why these waivers are not included in the proposed regulations are unfounded. Only some recipients with mental disabilities will receive benefits through a representative payee, and Treasury's public education program cannot be finely tuned enough to reach all recipients who face literacy and English language barriers.

In addition, the final regulations should make all waivers available to recipients with bank accounts, regardless of when they began receiving federal benefits. Recipients with bank accounts can face the same financial hardships caused by EFT as those without accounts, and waivers based on the other hardship situations should be equally available to recipients who happened to have bank accounts when they began receiving benefits after July 26, 1996. The system proposed in the regulations creates a meaningless and arbitrary distinction depending on when the person began to receive benefits.

## 2. Electronic Transfer Accounts

***Recommendation:*** *Electronic Transfer Accounts must be no-cost, accessible, and available to any recipient of Federal benefit payments, not only those without bank accounts. Treasury must allow for public comment on its ETA design, and the process by which Treasury selects entities to provide ETAs should be open to public scrutiny and comment.*

**a. General principles**

Design of Electronic Transfer Accounts (ETAs) presents Treasury with an unprecedented opportunity to bring many federal benefits recipients into the banking mainstream. Treasury should create a meaningful product that will provide recipients with a range of basic services *at no cost*. On the one hand, financial institutions can receive "credit" under the Community Reinvestment Act (CRA), to the extent permitted by the CRA and its implementing regulations, for providing innovative banking services to underserved low income neighborhoods. On the other hand, financial institutions that charge recipients for such services should *not* receive CRA credit. Treasury must not create a structure that will serve as a windfall to financial institutions, at substantial cost to vulnerable low income recipients.

**b. Responses to Treasury's questions**

We respond below to the questions regarding ETA design posed in the preamble to the proposed regulations. We differ fundamentally, however, with Treasury's presentation of the issues as a necessary choice between low cost and full services, in which recipients lose out.

- *Q: Should Treasury make available a debit card-based account to individuals who are required to receive Federal payments by EFT and who do not have an account of their own with a financial institution?*

A: Treasury should make available an account *with a debit card option*, but the account should also offer checking and other withdrawal and deposit services, for recipients who do not or cannot use the debit card option.

- *Q: Should the cost of the account to the recipient be the most important factor for selecting the account structure and/or the account providers, or should the account structure be designed to meet other objectives even if the cost to recipients is increased as a result?*

A: ETAs should be structured to impose no costs on recipients, and must *also* meet Treasury's explicit policy objective of assisting "unbanked" recipients of federal funds to move into the financial services mainstream, by ensuring that ETAs are accessible, safe, include a range of banking services, and are accompanied by effective education and marketing. Treasury should not impose "tradeoffs" between increased costs and additional account features.

- *Q: Should the account be structured to provide only a basic withdrawal service at the lowest possible cost, with additional service charges for additional features, or should the account offer a range of services at a fixed monthly cost, even if greater than the cost of a basic account?*

A: ETAs should provide a range of basic banking services at *no* cost; recipients should not be forced to choose between meaningful and affordable financial services, particularly in view of Treasury's goal of moving recipients into the financial services mainstream, and coupled with the Act's requirement that all recipients have access to an account at a financial institution at a reasonable cost. At the least, the no-cost account should be available to all recipients of needs-based federal benefits, and a minimal sliding fee scale should be charged for other recipients, based on their incomes.

- *Q: How many withdrawals should be included in the base price of the account? Should the account terms address the charges imposed by automated teller machine owners other than the account provider?*

A: At least twelve cash withdrawals, and unlimited withdrawals via store Point-of-Sale (POS) devices per month must be included in the no-cost base account. As one of EFT's virtues is that it can prevent theft of benefits from recipients, many of whom are senior citizens and/or disabled, recipients must have the option of making small incremental withdrawals from their accounts. Treasury should take this opportunity to prohibit all "surcharges" imposed by automated teller machines on EFT recipients, both by the account provider and "foreign" ATMs. Surcharging will have a particularly harsh impact on recipients with ETAs, who will not be able to choose their account provider based on convenience of ATM locations.

- *Q: Should the account structure provide for additional electronic or nonelectronic deposits within the basic monthly service charge? If so, what number of deposits?*

A: The account structure should provide for unlimited additional electronic or nonelectronic deposits, at no charge, as ETAs should encourage recipients to save money from a variety of sources, and financial institutions benefit from having recipients' funds on deposit.

- *Q: Should the account provide for some number of third-party payments, such as payments for rent or utility bills? If so, how many third party payments should be provided for and should they be priced in the basic monthly service charge?*

A: The no-cost account should provide for at least five third-party payments each month, at no additional charge.

- *Q: Should the account include a savings feature? How would such a feature operate? Would additional free withdrawals or the capability to accept deposits other than the Federal payment act to foster savings by the recipient?*

A: By allowing recipients to receive additional deposits, and permitting incremental withdrawals, as suggested in these comments, the account will encourage savings. In

addition, the account should include a checking feature that allows recipients to write at least twelve checks each month, at no charge.

- *Q: How important is a broad geographic reach in meeting the access objectives that most recipients will want? How should Treasury best meet access needs in underserved areas?*

A: We are very concerned about severe access problems that EFT will create for recipients living in urban neighborhoods and rural areas that have been redlined or underserved by financial institutions. Recipients in these neighborhoods who currently receive their benefits via paper checks are able to cash their checks with stores, public housing authorities, and friends, options that will not be available with EFT. Although these recipients may be able to secure waivers from the EFT requirement, we urge Treasury to meet the Act's mandate by encouraging regulated financial institutions to locate in areas that they have traditionally redlined.

Treasury should not designate any financial institution as its agent for providing ETA services in a geographic area where that institution has failed to provide evidence that it can guarantee reasonable access to *all* recipients living in that area. Treasury must ensure access to accounts for recipients with disabilities. Furthermore, we encourage Treasury to link with community development banks and community development credit unions -- institutions with the explicit mission of meeting substantial credit needs of low income neighborhoods. These institutions generally are located in neighborhoods without conventional bank branches, are experienced in providing innovative banking services to low income people at low cost, and are *required* to invest any profit they might realize from EFT into the people and communities that they serve.

- *Q: Should access to the account be provided at outlets in addition to those normally offered by the financial institution providing the account?*

A: In New York State, we have state laws licensing and regulating check cashing operations, so customers are not subject to the inflated fees and services offered by such outlets in other states. Given the serious problems that EFT presents for residents of neighborhoods without conventional bank branches, we can see that access through check cashing outlets might provide a partial solution, although one that is significantly less satisfactory than actual bank branches. In states that do not rigorously regulate check cashing outlets, however, such linkages could be disastrous for low income residents, who could end up spending huge percentages of their limited incomes on unnecessary fees and services. We strenuously urge Treasury to take the lead in regulating such arrangements, to ensure that EFT benefits, rather than harms, low income consumers. At the least, recipients should always have the option of accessing funds at a regulated financial institution, even if other outlets are available.

- *Q: If additional access is offered through arrangements with third parties, should cost of this additional access be included in the pricing proposal in the competitive bid process?*

A: If an entity that is chosen to provide ETAs decides to offer additional access, either because it cannot on its own guarantee reasonable access to recipients, or to make its product more attractive to recipients, that entity should cover the cost of the additional access. It would be completely unreasonable to pass the cost of additional access on to recipients who happen to live in redlined communities.

- *Q: Which account design would provide the appropriate opportunity for non-financial institutions to participate in the delivery of services to Federal payment recipients?*

A: Absent a comprehensive, carefully conceived and innovative effort by an appropriate federal agency, such as the post office, to participate in EFT services, it is our position that non-financial institutions should not be involved in delivering services to recipients of federal benefits. As a stated objective of EFT is to bring recipients into the financial services mainstream, we think that federally regulated financial institutions, particularly community development credit unions and banks, are best situated to deliver services. Retail stores can be involved through POS devices.

When Treasury issues regulations governing ETA design, the agency should allow sufficient time for oral and written public comment. In addition, the process by which Treasury selects entities to provide ETAs should be open to public scrutiny and comment. Finally, the regulations should make ETAs available to all recipients, including those who already have accounts at financial institutions. Many low income recipients, particularly those living in states without low-cost "basic banking" laws, have accounts that are unaffordable in light of their limited incomes. If ETAs are properly designed, they will represent a better choice.

### **3. Account regulation**

***Recommendation:*** *The final regulations must provide that only federally regulated financial institutions can be conduits for federal funds. The final regulations should prohibit attachment of funds from an account into which federal payments have been deposited.*

It is critical that Treasury regulate not only ETAs, but all accounts established by federal benefit recipients for the purpose of receiving federal benefits via EFT. During the next year, many recipients will establish bank accounts in order to comply with EFT requirements. We are very concerned that check cashers and financial institutions will link to provide account services. Such arrangements should be prohibited if recipients can access funds only through the check cashing outlets. *In the final regulations, only federally regulated financial institutions should be permitted to be conduits for federal funds.*

Recipients should always be able to access their benefits through the federally regulated financial institution, as well as through other locations. Federal consumer protections should therefore apply to the transaction from the point the federal payment is electronically transferred to the account, until the recipient withdraws the funds, wherever that may be.

In addition, Treasury's final regulations should explicitly prohibit attachment or garnishment of any funds from an account into which federal benefit funds have been deposited, as many low income recipients are afraid of judgment creditors. Federal law already prohibits attachment and garnishment of these benefits, but many recipients are unaware of these provisions, and the only remedy available for a recipient whose funds have been wrongly attached is to file a lawsuit against the financial institution. By prohibiting attachment or garnishment, publicizing the prohibition to recipients, and imposing sanctions on banks that violate the prohibition, Treasury will better succeed at its objective of bringing "unbanked" recipients into the financial services mainstream.

#### 4. Public education

***Recommendation:*** *Treasury must conduct comprehensive public education about EFT, linking with and fully compensating community groups that want to do the work. Treasury should not begin its public education campaign until it has determined how ETAs will work.*

It is critical that Treasury engage in comprehensive, on-going, and accessible public education around EFT, so that recipients can anticipate changes and best weigh their options. Public education material must be available in several languages. Treasury should link with community-based groups, which will be most effective in getting the information disseminated at the neighborhood level. The groups, however, must be willing to engage in EFT outreach, and must be compensated for significant staff time and overhead that will be incurred as part of an effective outreach strategy.

We have grave concerns about Treasury's intention to launch its public education campaign in the next few months, before it has determined the design and cost of ETAs. If "unbanked" recipients are not educated about the low or no-cost account that will be available to them *if they do nothing*, they will not receive accurate information, and will open accounts that may be inaccessible, unaffordable, predatory, and lacking a sufficient range of services. If the regulations are not changed, as we have suggested above, to make ETAs available to recipients who already have bank accounts, these recipients will not have the option of switching to ETAs, and EFT will result in an even more tremendous windfall to the financial services industry, courtesy of the federal government.

We trust that our comments will be carefully considered, and hope that our recommendations will be incorporated into the final EFT regulations. Please do not hesitate to contact us with any questions.

Sincerely,

1199 Retired Members Division  
Association for Neighborhood and Housing Development  
Bailey House  
Brooklyn-wide Interagency Council of the Aging  
Citizen Action of New York  
Coalition for the Homeless  
Community Food Resource Center  
Council of Senior Centers and Services of New York City  
Disability Law Center at New York Lawyers for the Public Interest  
Fifth Avenue Committee  
Friends and Relatives of the Institutionalized Aged (FRIA)  
Gay Men's Health Crisis (GMHC)  
Greater Rochester Community Reinvestment Coalition  
Harlem Consumer Education Council  
Housing Works  
Institute for the Puerto Rican-Hispanic Elderly  
Intrepid Senior and Disabled Advocates  
JPAC for Older Adults  
The Lantern Group  
Neighborhood Economic Development Advocacy Project  
New York City Community Reinvestment Task Force  
NYS Senator Franz S. Leichter  
New York State Council of Senior Citizens  
Pace Adult Resource Center  
Public Interest Law Office of Rochester  
Queens Independent Living Center  
Queens Interagency Council on the Aging  
Reinvestment Committee of Cypress Hills and City Line  
Staten Island Center for Independent Living